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Seventy-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1942nd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 18 July 2001, at 3 p.m.

Chairperson: Mr. BHAGWATI

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1942/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5) (continued)

Second periodic report of Guatemala (CCPR/C/GTM/99/2; CCPR/C/71/L/GTM; HRI/CORE/1/Add.47) (continued)

1. Mr KRETZMER referred to replies given by the delegation of Guatemala to questions about the right to life. Apparently, abortion was illegal in Guatemala unless the woman's life was in danger. However, women's lives were also put at risk by illegal, unhygienic abortions. Did the delegation take the view that the State party had no obligation to do anything about such risks? Article 2 of the Covenant placed a duty on States parties to ensure the right to life of all individuals within their jurisdiction, including women who were forced to take action which could endanger their lives. According to the information given to the Committee, rape was only a criminal act if there was evidence of physical force being used; did that mean that a woman who decided not to resist because she was under threat would not be classified as a victim of rape? Was it correct that a man would be exonerated from rape charges if he agreed to marry the woman, provided she was over the age of 12? On the question of prostitution, the United Nations Special Rapporteur on the sale of children had estimated that over 2,000 children, boys and girls, were being exploited in over 600 brothels in Guatemala City alone, and that girls as young as seven, eight or nine, were working in them. In its conclusions on Guatemala's initial report, the Committee had insisted that stern measures must be taken against the perpetrators of violence against minors. Surely the prostitution of children was a crime under Guatemalan law; what was being done by the police to enforce the law? The Committee had been told that police were trained to deal with the sexual abuse of street children, but had any police officers been prosecuted for involvement in child prostitution? In view of the reported threats against women's human rights groups, had the delegation any information on that score, and what action was being taken to protect those groups?

2. On the question of freedom of expression, paragraph 336 of the report stated that in 1997 the Government had held an auction of radio frequencies; what had the result been? In a country like Guatemala, radio was a more accessible medium than television. According to the special rapporteur on freedom of expression of the Organization of American States, the Government's policy had resulted in inadequate participation by women, indigenous communities and young people in radio broadcasting. It did not seem likely that the weaker elements in society would benefit from a system of auctioning. The Committee had been told that according to the Constitutional Court, the guarantees of freedom of expression were restricted, in some circumstances, to journalists; did that mean that persons not recognized as journalists did not enjoy that protection? Laws on defamation could be used by governments and public corporations to stifle criticism. Did corporations in Guatemala use the law in that way?

3. Mrs. MEDINA QUIROGA emphasized the responsibility of States parties to ensure observance of the Covenant. That responsibility was incumbent on all public officials, including members of the police, the judiciary, the Constitutional Court or the Congress, not merely on the Government. What seemed to be lacking in Guatemala in that respect was not financial

resources or the appropriate structures, but political will. The delegation appeared to have interpreted some of the Committee's remarks as criticisms of the current Government. However, Guatemala's second periodic report covered a period beginning before the term of office of the current President, and the Committee's remarks related also to that earlier period.

4. Some points remained unclear. How long was the period of compulsory schooling? Had the Minors Code been approved and was it in force? What judicial follow-up had there been to the judgement of the Inter-American Court of Human Rights in the case concerning street children, which was connected with the problem of impunity?

5. Data about the situation of women in Guatemala were very sketchy, even in the Human Development Report. On the questions of abortion and family planning, the Catholic Church could not prevent a State from complying with its obligations to protect the rights of women. It was welcome news that there were institutions in Guatemala working to combat violence against women. However, the law on violence in the family, adopted in 1996, had not entered into force until 2000. What was being done to make the law effective, in terms of training for police, judges, doctors and social workers, and public education campaigns to make women aware of their rights? Had rape been redefined in the Criminal Code, or was the penalty for rape linked to the woman's personal situation? In some Latin American countries, a woman's "honesty" was a determining factor in a court's verdict on the crime of rape. It could be assumed that many women in Guatemala worked as domestic servants. Were they covered by the employment laws, and how was compliance with those laws monitored in their case? Were women working in maquiladoras (in-bond assembly plants) protected by the laws? Did the employment laws regulate night work by women, or work by women in mining, and did they prescribe any specific treatment of women at work? Did they raise any obstacles to women's access to certain occupations?

6. Referring to the case of Bruce Harris, a childcare advocate accused of defamation, perjury and slander in connection with an illegal adoption ring, she said that he should not have been refused freedom of expression in Guatemala on the ground that he was not a journalist.

7. Ms. CHANET referred to the statement by the delegation that the Constitution took precedence over article 4 of the Covenant. Unless a State party had entered a reservation to article 4, it must ensure that its constitution did not conflict with the Covenant rules on states of emergency. On the question of the death penalty, the delegation had stated that public opinion in Guatemala was opposed to its abolition. Abiding by the vox populi was a dubious argument in favour of retaining the penalty, because even in countries with a long abolitionist tradition, the section of public opinion which favoured abolition had never made its voice heard through street demonstrations, or commanded a majority in a referendum.

8. She referred to the Committee's Concluding Observations on Guatemala's first periodic report (para. 31), in which it had recommended that the independence of the judiciary be ensured and that a law regulating it be enacted. According to paragraph 286 of the second periodic report, controls implemented by the General Courts Inspectorate had failed because they had encroached on the jurisdiction of the courts, thereby "undermining the independence of the person giving judgement". Had those controls now been abolished, or were they being exercised by the Supreme Court? On the question of freedom of expression, article 35 of the Constitution

prohibited criticism of governing authorities, and that prohibition was reflected in articles 411 and 412 of the Criminal Code, which imposed criminal penalties for such acts. How did that square with the requirements of article 19 (2) of the Covenant?

9. Mr. HENKIN observed that, according to the delegation, the major problems in Guatemala - lawlessness, lynchings, disappearances, impunity, the excessive influence of the military - could to be attributed partly to the continuing state of emergency while the peace agreements were being implemented. He wondered, however, if the Government was really doing all it could, in the light of its responsibilities, to combat those problems. On the question of capital punishment, in almost every country where it had been abolished public opinion lay in the opposite direction. Was the Government seeking to honour its obligations under the Covenant by endeavouring to influence public opinion, or if necessary disregard it, in order to abolish the death penalty? The same question was relevant to the treatment of indigenous minorities, since the majority of the population would not necessarily be in favour of bettering their conditions. To meet its obligations in respect of the economic, social and cultural rights of its people, a State had sometimes to disregard the "democratic" view of the majority. He wondered if there was any law in Guatemala against libelling the Head of State or other public officials, and if so whether it could be deemed consistent with the Covenant. Was the right to bear arms protected by the Constitution, and what did it mean in practice? According to the report, every discharge of a weapon had to be officially reported: did that rule apply to the police?

10. Mr. ALVARADO ORTIGOZA (Guatemala) replied first to the questions about the rights of indigenous peoples. Five constitutional reforms, to be translated into legislation, were designed to protect those rights, on the basis of consultation with the peoples concerned. It was important to have laws which could be enforced, and not merely to copy foreign models. Accordingly, the Government was pursuing a policy of consulting the leaders of indigenous communities, and carrying out studies of their needs, traditions and lifestyles. As for the referendum, it had not been followed up because over 80 per cent of the population had abstained from voting. They had been asked to approve 50 separate constitutional amendments, set out in the form of four questions, and the whole voting process was far too complex for the public at large to understand. Moreover, the result would not have been representative of such a diverse society, which was still fragmented by the recent civil war. As for the electoral registration of indigenous peoples, there was only one register of citizens, without distinction as to membership of different communities. However, every effort was made to persuade members of indigenous communities to register births, so that voting rights could be exercised later. The participation of indigenous peoples in public life was guaranteed in a variety of ways and was integral to the peace agreements. The lack of accurate statistics about women's participation in various fields was partly due to the war, during which records had been destroyed or lost. The crime of rape was defined not only on the basis of physical force, but also on the basis of other factors such as deception or false promises of marriage. It was true that women's groups sometimes came under attack, not by the Government or the armed forces but by criminal elements. As for the Catholic Church, it exercised an influence in society and on social behaviour, but the State did not seek to model its laws on the precepts of the Church, which would not be acceptable to the public. It was correct that abortion was prohibited by law, and that women did not seek abortions openly for fear of prosecution. In that respect, the State was in some difficulty, because it had to recognize its obligation to protect the right to life. He did

not know of any prosecutions for violence within the family, but such cases could well form part of the statistics for assault generally. The use of the term "honest" was now outdated, and he would welcome legislation to eliminate such terms from the language of the law.

11. Domestic service was covered for by the Labour Code, in a chapter entitled "Workers subject to special arrangements", which also included provisions for minors under the age of 14 years, agricultural labourers and other groups. Those provisions were not intended to be discriminatory. On the contrary, many of the special arrangements provided preferential treatment, particularly in the case of minors, for example. The reform of the Labour Code in 1992 had improved working conditions for women in many respects, for instance by making it illegal to dismiss a pregnant woman, for whatever reason.

12. The Covenant took precedence over domestic law but it was difficult to reconcile the precedence of international agreements with the principle of the supremacy of the Constitution.

13. Child labour had yet to be eliminated in Guatemala, but efforts were being made to regulate it as much as possible. Children under the age of 14 were not usually permitted to enter employment. Exceptions to that rule were made subject to strict conditions, including continued education and parental permission. In many rural communities, it was customary for children to accompany their parents to their place of work, and that was a significant obstacle to the elimination of child labour. The Children and Young Persons Code dealt with such matters but had not yet entered into force, mainly because of opposition from vested interests. The Government had a responsibility to raise awareness of the importance of reforms under the Code.

14. In the Villagrán Morales case involving the execution of five street children, the Inter-American Court of Human Rights had ruled against the State of Guatemala, and had ordered the investigation to be reopened with a view to bringing those responsible to justice. Compensation amounting to over 500,000 US dollars had been awarded to the families of the victims. In spite of the charges of defamation brought against Bruce Harris, there were no restrictions on freedom of expression in Guatemala. The Government was determined that its plan of action to address the problem of child prostitution should be implemented on the basis of public consensus, with the active participation of all sectors of society. It wanted to avoid any repetition of the relative failure of its national literacy plan, which had lacked the support of non-governmental organizations (NGOs), in spite of an illiteracy rate of over 60 per cent in Guatemala.

15. It was important to ensure that the process of constitutional reform took international standards into account. In response to the concerns expressed about State interference in the justice system, he said that the executive branch had ceased to exert any influence over the courts. In addition to extensive provisions on recruitment, welfare and discipline within the judiciary, the new Legal Occupations Act established internal supervisory mechanisms to replace State supervision of the courts.

16. Mr. ARENALES FORNO (Guatemala) said that the Covenant took precedence over all domestic legislation, but could not override provisions of the Constitution. The Constitution could only be amended by a qualified majority vote in Congress and a referendum victory. That was no cause for concern, however, since nothing of substance in the Constitution was

inconsistent with the Covenant. If anything, human rights and fundamental freedoms were provided for more comprehensively in the Constitution than in most international instruments, given that it had been drafted as recently as 1985.

17. With regard to the suggestion of a monopoly in the media, he said that only four of the enormous number of television channels operating in Guatemala were run by the State. Radio was the most accessible means of communication in many areas of the country, and numerous stations were run by indigenous communities, religious groups and other organizations. Indigenous peoples constituted a majority of the Guatemalan population. For many centuries, the legal and political framework of the State had failed to meet the needs of a multilingual and multi-ethnic society. Changes were now being introduced to rectify the situation, such as amendments to the Constitution in order to give official recognition to indigenous languages. While Spanish remained the only official language under the Constitution, Government programmes such as the literacy plan already responded to the linguistic and cultural needs of indigenous communities.

18. Abortion was a punishable offence, but that did not prevent the State health care system from fulfilling its obligation to protect women in need of treatment. No woman had actually faced charges of abortion in recent years. There were two categories of rape according to whether or not excessive physical violence was involved, but both were subject to harsh sentences of between 12 and 50 years' imprisonment. Government officials had been brought to trial, and even sentenced to death, for crimes of rape committed against minors. Marriage was never permitted as an alternative to punishment for rape.

19. The death penalty remained in force, not only because that was the will of the people, but also because it was supported by a majority in the Congress. Guatemala was not the only country in Central and Latin America to apply the death penalty. The Congress had taken the decision to extend the application of the death penalty to kidnapping, following public pressure to withdraw from the American Convention on Human Rights if it did not do so. Supervision of the courts had never been carried out by institutions of the executive branch, and the existing supervisory body did not interfere with sentencing.

20. The right to keep arms in the home was recognized in the Constitution, but ordinary citizens needed a licence to bear arms. There were strict controls governing the calibre of weapons, registration and other aspects. As a legacy of 36 years of armed internal conflict, guns were widely available, and the Government was doing everything it could to control them.

21. Ms. MEDINA QUIROGA, referring to the Children and Young Persons Code, asked how it was possible for a law to be adopted and yet not enter into force. Was it correct that in the Criminal Code, a distinction was drawn between rape and "estupro" (unlawful sexual relations with a minor), and that the latter crime was not punishable if the victim was not an "honest woman". Lastly, she associated herself with Mr. Kretzmer's question as to whether the law on defamation could be used by the State to stifle criticism.

22. The CHAIRPERSON asked to what extent the indigenous population was represented in Government.

23. Mr. ALVARADO ORTIGOZA (Guatemala), referring to the offence of estupro (sexual relations with a minor) and the use of the term "honest woman" in that regard, said that a man who had sexual relations with an underage girl was exempt from responsibility if he had married the girl with her parents' consent.

24. Defamation of public officials constituted an offence only where the slanderous remarks concerned their private lives and had no bearing on their official duties.

25. With regard to the Children and Young Persons Code, the Congress, following a number of postponements, had eventually decided by legislative decree to defer its entry into force sine die. He admitted that, in so doing, Congress had brought discredit on itself.

26. In the previous parliament, members of the indigenous community had accounted for 4 per cent of parliamentarians and had not been represented in the Cabinet. Two members of the present Cabinet were from the indigenous community and the three indigenous members of parliament were extremely active. They wore indigenous dress and continued to follow indigenous customs and traditions.

27. Mr. ARENALES FORNO (Guatemala) said that the indigenous population had suffered extreme forms of discrimination and many had been reluctant on that account to identify themselves as indigenous. Prior to the peace agreements, only 20 per cent of the population had been recognized as indigenous, but the real figure was now put at some 40 per cent because the existence of programmes for the protection of indigenous rights had encouraged many more people to identify themselves as indigenous.

28. Ms. MUDINA QUIROGA said that, in her view, article 413 of the Criminal Code was quite clearly directed against persons accused of slandering public officials in connection with the performance of their official duties.

29. Mr. RIVAS POSADA urged the State party, in its future periodic reports, to provide detailed information about the sentences imposed on police officers and members of the armed forces who had been found guilty of misconduct.

30. Mr. ALVARADO ORTIGOZA (Guatemala) insisted that all kinds of criticism of a person's performance of his or her official duties were acceptable. However, the offences of injuria (insult) and calumnia (slander) were characterized in the Criminal Code as "offences against honour", hence as injurious to a person's reputation.

31. He undertook to obtain the information requested about sentences imposed on police officers and members of the armed forces.

32. The CHAIRPERSON said that, while Guatemala's report was detailed and comprehensive and had been submitted without undue delay, it failed to shed light on the day-to-day human rights situation of the population and to address the concerns expressed by the Committee in its concluding observations on the State party's initial report. The annexes containing statistical data had arrived too late to be taken into account in the dialogue with the delegation.

33. Some steps had been taken to improve the administration of justice, for instance the setting up of a National Commission to Monitor and Support the Strengthening of Justice and the Council on Judicial Service and the appointment of a Special Prosecutor to investigate threats to judges and prosecutors. But according to the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, who had visited Guatemala earlier in the year, threats to judges, lawyers and prosecutors had increased over the previous two years. The Committee was particularly disturbed by such incidents as the lynching of Judge Martínez Pérez on 13 March 2001. The former President of the Constitutional Court, Ms. Conchita Mazariegos, had also been threatened when presiding over a case involving Congressmen. The judge responsible for investigating the murder of Bishop Gerardi, Henry Monroy Andrino, had been forced to resign and leave the country because of threats to his life. The Special Rapporteur had further stated that the authorities had failed to implement many recommendations for improving the administration of justice.

34. Other major sources of concern were the continuing impunity of police officers and members of the armed forces and paramilitary groups. Reputable human rights organizations had documented a number of serious cases of human rights violations on which no action had been taken. Lynchings continued to occur and were not properly investigated or punished. The President's power to grant a pardon to persons under sentence of death had been withdrawn, in violation of article 6 (4) of the Covenant. The delegation's argument that the Covenant prevailed over domestic legislation and could be invoked by persons on death row was unconvincing because very few people would be aware of that option. The extension of the death sentence to the offence of kidnapping was a violation of article 6, paragraphs 1 and 2. It was unfortunate that the proposed institutional reform of the judiciary, the police and the military had been defeated in a national referendum. The Government should have conducted a reform campaign before consulting the population.

35. If a member of Congress was guilty of an ordinary offence, he or she should not be able to invoke parliamentary immunity.

36. The criminalization of abortion denied women the right to reproductive choice. The fact that no case of abortion had been brought to court was immaterial. Women should not be compelled to break the law in such cases.

37. He trusted that the Guatemalan authorities would address those and other concerns as soon as possible so that a major improvement in the human rights situation could be documented in the State party's third periodic report.

38. Mr. ALVARADO ORTIGOZA (Guatemala) assured the Committee that the delegation had taken to heart all the concerns expressed by the Committee, since their objectives, in terms of the protection and promotion of human rights, the development of a stable political system and the strengthening of the rule of law, were basically the same.

39. The delegation of Guatemala withdrew.

The public part of the meeting rose at 4.45 p.m.